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Kim Harrington
Acting Principal Director, Defense Pricing and Contracting
Defense Pricing and Contracting
3060 Defense Pentagon
Room 3B938
Washington, DC 20301-3060

RE: December 17, 2018 Meeting with Industry Representatives for Proposed Changes to Contract Financing

Dear Mr. Harrington,

Thank you for your engagement with industry on December 17, 2018 and the subsequent public meetings regarding payment policy and regulations. The meeting on the 17th was positively viewed as an important step in achieving a more open and transparent dialogue on this issue. We appreciate your leadership on this matter and welcome the opportunity to provide the views of our industry members. This letter recaps some of the discussion points important to our members as you continue to formulate contract financing policy.

NDIA believes the implementation of the Performance-Based Payments (PBPs) changes could be implemented quickly by eliminating both the current DFARs provisions and the implementing policy and instead utilize the FAR provisions used by other federal agencies. This move would unify DOD practices with other agencies and ease the compliance burden on those companies doing business across the government.

We also believe that performance is best managed and incentivized on a contract-by-contract basis, as opposed to the business-unit or enterprise levels. Aggregating cash payment terms at the enterprise or sector performance level will dilute the importance of performance on significant programs, potentially delaying delivery and reducing the agility of the acquisition system. A move towards this style of performance assessment may also discourage contractors from taking on potentially high-risk, cutting-edge projects, as poor performance on a single contract will have the ability to negatively impact a whole business unit.

Tools currently exist within the DFARS to allow for performance to be written into the contract. Individual program managers and contracting officers should be trained on these tools and empowered to select the milestones that most appropriately align to the specific program requirements of each contract. This approach enables PMs and COs to incentivize positive performance with payment levels above the current limitations and motivates improvement where poor performance is occurring. Industry partners would appreciate the opportunity to participate in these training sessions alongside COs and PMs to help ensure that both sides are familiar and comfortable using these tools on individual contracts moving forward.

We have concerns about previously contemplated performance metrics such as "On-Time-Deliveries", which currently contain numerous issues with data accuracy and system performance. Any attempts to utilize that system and data would require increased scrutiny and corrective actions by industry, increasing costs. In addition, past studies cited as support for payment reform have utilized partial, or outdated industry data. We welcome the opportunity to discuss the pedigree of the data and any resulting conclusions drawn from that data in future meetings.

We would welcome contract finance reform for long duration contracts or contracts with long production lead-times. This could be accomplished through utilizing increased progress payment rates and interim liquidations of fee. While we recognize that the current UCA payments have statutory requirements, we believe we need to take action here as well. Some of our industry members have long outstanding undefinitized UCAs for periods in excess of four years. We welcome the utilization of waivers or other methods to drive change sooner as we understand the timeline for contract financing change will extend at a minimum until the second quarter of calendar year 2019.

Changes to the current practice will have an outsized negative impact on small – to medium-sized businesses and manufacturers. Regardless of if small businesses are excluded from changes, as was proposed in previous rules, there will be a trickle-down affect for those businesses serving as sub-contractors. Small and medium-sized businesses are more sensitive to cash flow fluctuations and in the case of manufacturers, many must pay for costly raw materials upfront and the alternative to government-financed contracts leaves contractors at the mercy of sluggish government payments. DoD will continue to rely on small– and medium-sized businesses as they seek to field greater innovations. Yet, changes to contracting practices like those previously proposed cause these businesses to either leave or never enter the defense marketplace, reducing the ability for the DoD to best serve the warfighter.

In summary, our industry members fully support supplying the warfighter with improved capability in the most expedient manner feasible. In order to accomplish this, we need to make investments early in a program, and often before a contract materializes, to mature technology, reduce risk and ensure schedule execution. This necessitates cash flow. Reducing the large working capital balances enables industry to invest in research and development, the workforce and capital to deliver needed capability to our warfighters.

If you or your staff have any questions, please contact me at whallman@ndia.org or (703) 247-2595.

Sincerely,

Wes Hallman
Senior Vice President of Policy
NDIA